UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,035	06/20/2003	David L. Kaminsky	5577-262	8462

20792	7590	04/12/2006

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER
DUNCAN, MARC M

ART UNIT	PAPER NUMBER
2113	

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 June 2003</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-20</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-4 and 6-20</u> is/are rejected.

7)☒ Claim(s) <u>5</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>20 June 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Status of the Claims

Claims 19-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-2, 4 and 6-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Marwaha (2004/0181685).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marwaha in view of Musman (2003/0126501).

Claim 5 is objected to.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 19-20 are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 7, lines 28-31, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., hard disk, CD-ROM, etc.) and intangible embodiments

(e.g., a transmission medium). As such, the claim is not limited to statutory subject

matter and is therefore non-statutory.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

Claim 12 recites the limitation "the respective status categories" in lines 2 and 5-

6. There is insufficient antecedent basis for this limitation in the claim. The use of this

claim language makes the intended claim dependency of instant claim 12 unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

Claims 1-2, 4 and 6-20 are rejected under 35 U.S.C. 102(e) as being anticipated

by Marwaha (2004/0181685).

Regarding claim 1:

Marwaha teaches:

generating a symptom that identifies a problem in the application program (paragraph 0056, lines 3-5 – an incoming alert is equivalent to a symptom);

identifying selected IT components in the IT infrastructure that may cause the problem in the application program, based on the symptom (paragraph 0056, lines 8-10 – the source of the problem associated with the message is determined);

obtaining a respective situation for a respective selected IT component, the respective situation being one of a set of component-independent predefined situation categories that is associated with the respective selected IT component, so as to provide status of the selected IT components in a common situation format that includes the associated one of the component-independent predefined situation categories (paragraph 0056 lines 8-10, paragraph 0058 tables, paragraph 0061 lines 1-5 – the alert messages that are received are parsed and tokens extracted to determined a status of the alert and then the message is put into a common event format that details the status, etc.); and

analyzing the respective situations that are obtained to identify at least one problem in the selected IT components that may cause the problem in the application program (Fig. 11 – 1108, 1110, 1120 and accompanying descriptions in paragraphs 0142 and 0143).

Regarding claim 2:

Marwaha teaches:

wherein the analyzing is followed by automatically identifying corrective action in

the IT infrastructure based on the at least one problem in the selected IT components

(Fig. 11 – 1120, 1124 and accompanying descriptions in paragraph 0143).

Regarding claim 4:

Marwaha teaches:

determining correlations between the respective situations that are obtained (Fig.

11 – 1108 and accompanying description in paragraph 0142); and

identifying the at least one problem in the selected IT components based on

sufficiently correlated ones of the respective situations (paragraph 0142 lines 9-12).

Regarding claim 6:

Marwaha teaches:

wherein the identifying the at least one problem comprises evaluating the

sufficiently correlated ones of the respective situations so as to select one of the

predefined situation categories based on the sufficiently correlated ones of the

respective situations (paragraph 0142 lines 9-17 – the alerts are correlated to determine

the alert that causes the other alerts and then this alert is used as a root cause for

display and for indexing to the action table).

Regarding claim 7:

Marwaha teaches:

wherein the identifying the at least one problem is followed by generating a

common situation format representation of the status of the application program based

on the one of the predefined situation categories that was selected based on the

sufficiently correlated ones of the respective situations (paragraph 0142 lines 12-14 –

once the events have been correlated, the active alert that was chosen based on the

correlation is displayed).

Regarding claim 8:

Marwaha teaches:

wherein the automatically identifying comprises generating a common situation

format representation of the corrective action that is identified (paragraph 065 tables –

see example tokens for Action. The corrective action is identified by a single character

chosen from the numerals 1-3 for all actions.).

Regarding claim 9:

Marwaha teaches:

wherein the selected IT components comprise IT components that are used

when running the application program on the IT infrastructure (paragraph 0003 – the

components are components of the enterprise being managed).

Regarding claim 10:

Marwaha teaches:

obtaining respective ones of a set of component-independent predefined status

categories that are associated with respective selected ones of the IT components, so

as to provide status of the respective selected ones of the IT components in a common,

component-independent format (paragraph 0056 lines 8-10, paragraph 0058 tables,

paragraph 0061 lines 1-5 – the alert messages that are received are parsed and tokens

extracted to determined a status of the alert and then the message is put into a common

event format that details the status, etc. The tokens are component-independent); and

analyzing the respective status categories that are obtained to identify at least

one problem in the selected ones of the IT components that may cause the problem in

the application program (Fig. 11 – 1108, 1110, 1120 and accompanying descriptions in

paragraphs 0142 and 0143).

Regarding claim 11:

Marwaha teaches:

wherein the analyzing is followed by automatically identifying corrective action in

the IT infrastructure based on the at least one problem in the selected ones of the IT

components (Fig. 11 – 1120, 1124 and accompanying descriptions in paragraph 0143).

Regarding claim 12:

Marwaha teaches:

determining correlations between the respective status categories that are

obtained (Fig. 11 – 1108 and accompanying description in paragraph 0142); and

identifying the at least one problem in the selected IT components based on

sufficiently correlated ones of the respective status categories (paragraph 0142 lines 9-

12).

Regarding claim 13:

Marwaha teaches:

wherein the selected ones of the IT components comprise IT components that

are used when running the application program on the IT infrastructure (paragraph 0003

– the components are components of the enterprise being managed).

Regarding claim 14:

Claim 14 is rejected as the system for performing the method of claim 1 above.

Regarding claim 15:

Claim 15 is rejected as the system for performing the method of claim 2 above.

Regarding claim 16:

Claim 16 is rejected as the system for performing the method of claim 4 above.

Regarding claim 17:

Claim 17 is rejected as the system for performing the method of claim 6 above.

Regarding claim 18:

Claim 18 is rejected as the system for performing the method of claim 7 above.

Regarding claim 19:

Claim 19 is rejected as the computer program product that causes the method of claim 10 to be performed.

Regarding claim 20:

Claim 20 is rejected as the computer program product that causes the method of claim 12 to be performed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.

2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marwaha in view of Musman (2003/0126501).

Regarding claim 3:

The teachings of Marwaha are outlined above.

Marwaha does not explicitly teach generating a symptom based on an error log. Marwaha does, however, teach the generation of a common event format from source specific event information.

Musman teaches generating a symptom based on an error log (paragraph 0037 lines 5-8).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the error log teaching of Musman with the common event format teachings of Marwaha.

One of ordinary skill in the art at the time of invention would have been motivated to make the combination because Marwaha teaches generating common event format messages from source-specific event information.   Musman teaches that using an agent based approach to generating messages, wherein the agents generate the messages based on log files (paragraph 0037 line 5-8), provides the benefits of increased survivability (paragraph 0030 lines 1-3) and a distributed, decentralized, and yet coordinated decision making (paragraph 0032 lines 5-7).

Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Prior art was not found the explicitly teaches or fairly suggests doing both time and transaction correlating together on respective situations in order to determine correlations between the situations as outlined in claim 5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Duncan whose telephone number is 571-272-3646. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

md